NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,	)	C023139
	)	
Plaintiff and Respondent,	)	(Super. Ct.
	)	No. SC059273A)
v.	)	
	)	FILED: May 21,
RICHARD NAPOLEON BROWN,	)	1997
	)	
Defendant and Appellant.	)	

A jury convicted defendant Napoleon Brown of what is commonly termed petty theft with a prior (Pen. Code, § 666); thereafter, in a trial by court, defendant was found to have been convicted of two prior strikes (Pen. Code, §§ 667, subd. (d), 1170.12, subd. (B)). He was sentenced to state prison for a term of 25 years to life.

On appeal, defendant contends the term imposed is disproportionate to the offense and, therefore, violates the state and federal constitutional prohibitions against cruel and unusual punishment. We shall affirm.

It is the function of the Legislature to define crimes and prescribe punishments, and such questions are in the first instance for its judgment alone. (*In re Lynch* (1972) 8 Cal.3d

410, 414.) However, the legislative authority is ultimately limited by the constitutional provision forbidding the infliction of cruel or unusual punishment. (*Ibid.*) Article I, section 17 of the California Constitution protects against the imposition of cruel or unusual punishment. "[I]n California a punishment may violate article I, section [17],[1/] of the Constitution if, although not cruel or unusual in its method, it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity." (*In re Lynch, supra*, at p. 424.)

In the present offense defendant was caught by Walgreen's security personnel stealing a car alarm from the store, a fairly nonserious offense in and of itself. However, defendant's criminal history is as follows: In 1969, as a juvenile, defendant was placed in a camp program for a violation of Penal Code section 245. The following year he was committed to the Youth Authority for assaulting a camp ward and running from the camp. In 1971, defendant had separate convictions for second degree burglary (Pen. Code, §§ 459, 460) and robbery (Pen. Code, § 211), and received a state prison sentence for each. In 1976, defendant was convicted of two counts of felony assault (Pen. Code, § 245); again he received a prison sentence. In 1984, defendant was convicted again of robbery (Pen. Code, § 211). This constitutes five prior felony convictions as an adult. Additionally, defendant has 17 misdemeanor convictions.

Consequently, defendant is not being punished for merely being a shoplifter with two prior felony convictions far in his past, as defendant argues. Defendant is a chronic thief and assailant whose behavior is an easy and appropriate fit within the habitual offender law. Given this record, defendant's sentence is not disproportional to the offense within the meaning of the California Constitution.

With respect to the federal Constitution, we simply note if a sentence of life without possibility of parole for a single

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1. Formerly California Constitution, article I, section 6.

offense of possessing more than 650 grams of cocaine is not disproportional under the United States Constitution (see *Harmelin v. Michigan* (1991) 501 U.S. 957, 1009 [115 L.Ed.2d 836, 874]), a fortiori a term of 25 years to life for a person with defendant's record cannot be considered disproportional.

The judgment is affirmed.

MORRISON, J.

We concur:

PUGLIA, P.J.

RAYE, J.